



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
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December 16, 2008

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2008-4 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by strikeout and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, January 16, 2009**. These may be sent by e-mail using the "Comments Form" on the Board's website (www.boe.ca.gov/proptaxes/cld.htm), fax or mail. Here is the mailing address:

Board of Equalization
County-Assessed Properties Division
ATTN: Annotation Coordinator
P. O Box 942879
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" (www.boe.ca.gov/proptaxes/annocont.htm). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at www.boe.ca.gov/proptaxes/cld.htm. Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website (www.boe.ca.gov/proptaxes/cld.htm). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG/grs
Enclosure

PROPERTY AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST No. 2008-4

December 16, 2008

190.0000 ASSESSMENT APPEALS BOARD

[190.0043](#) **Hearing Officer.** Under the requirements of Revenue and Taxation Code section 1637(a)(3), only a taxpayer, and not the county board of equalization or the assessor, may request that an assessment appeals hearing be held before a hearing officer pursuant to section 1636. Any use of a hearing officer to preside over a property tax-related hearing without the taxpayer's consent does not comply with the requirements of section 1637(a)(3). C 6/18/2008.

220.0000 CHANGE IN OWNERSHIP

[220.0322](#) **Lease Improvements.** Pursuant to Civil Code section 1013, the doctrine of accession provides that when a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land. Thus, absent lease provisions under which the lessee retains title to the improvements, title passes to the lessor upon the completion of the construction. C 6/16/2008.

[220.0376.005](#) **Limited Liability Company.** A limited liability company (Original LLC) is owned by five trusts. D is the trustor of two trusts and M is the trustor of three trusts. D's two trusts owned a 45 percent and a 5 percent interest respectively. Under Step 1, D's two trusts withdrew from Original LLC, and Original LLC transferred the 45 percent and 5 percent interest in the real property to the two trusts in the same proportional interest. As a result of the withdrawal, M's three trusts became an 80 percent, 10 percent, and 10 percent owners respectively of Original LLC. In Step 2, D's two trusts formed a new limited liability company (New LLC) and transferred their 45 percent and 5 percent interest in the real property respectively in exchange for a 90 percent and a 10 percent membership interest in the New LLC respectively.

Under Step 1, the transfer of D's 50 percent interest in Original LLC to D's trusts is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result of the transfers and withdrawal of D's trusts as members of Original LLC, M's trusts became the owner of 100 percent of Original LLC, resulting in M obtaining a controlling interest in Original LLC under section 64(c)(1). However, because the proportional ownership interests in the real property remain the same before and after the transfers, section 62(a)(2) excludes such transfers from change in ownership. As a result of the exclusion, M becomes an original coowner under section 64(d). Subsequent transfers of cumulatively more than 50 percent of the ownership interests in Original LLC by M will cause a change in ownership of all the real property owned by Original LLC that was previously excluded from change in ownership under section 62(a)(2).

Under Step 2, the subsequent transfer of a 45 percent interest and a 5 percent interest in the real property by D's two trusts respectively to New LLC is excluded from change in ownership under section 62(a)(2) as D's ownership interest in the real property remains the same before and after the transfers. Thus, D becomes an original coowner in New LLC under section 64(d). C 7/23/2008.

220.0451.005 Original Coowner Transfers. When a transfer of real property to a legal entity is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2), the person acquiring the legal entity interest immediately after the excluded transfer becomes an "original coowner" for purposes of determining the change in ownership consequences of any subsequent transfer(s) of that legal entity interest. Subsequently more than 50 percent of the interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity that was previously excluded from change in ownership will be reappraised. However, subsequent proportional transfers that are excluded under section 62(a)(2) are not cumulated or counted to determine a change in ownership. C 7/21/2008.

260.0000 CONFIDENTIAL RECORDS OF TAXPAYER

260.0056 Legal Entity Ownership Program. Revenue and Taxation Code sections 480.1 and 480.2 require legal entities to file a change in ownership statement (form BOE-100-B) with the Board's Legal entity Organization Program when a change in control or ownership of the entity has occurred. The names of legal entities that do not respond to a second request by the Board of Equalization to provide change in ownership information on form BOE-100-B are placed on the Board's non-response list and transmitted to county assessors. The identities of legal entities on the Board's non-response list should not be disclosed to the public, regardless of whether the Board initiated contact with the non-responding legal entity based on confidential information received from the Franchise Tax Board or from public information sources. C 7/9/2008.

290.0000 COUNTY ASSESSOR

290.0006 Board of Equalization's Legal Entity Ownership Program. Revenue and Taxation Code sections 480.1 and 480.2 require legal entities to file a change in ownership statement (form BOE-100-B) with the Board's Legal entity Organization Program when a change in control or ownership of the entity has occurred. The names of legal entities that do not respond to a second request by the Board of Equalization to provide change in ownership information on form BOE-100-B are placed on the Board's non-response list and transmitted to county assessors. The identities of legal entities on the Board's non-response list should not be disclosed to the public, regardless of whether the Board initiated contact with the non-responding legal entity based on confidential information received from the Franchise Tax Board or from public information sources. C 7/9/2008.

565.0000 LEGAL ENTITIES

565.0050 Legal Entity Ownership Program. Revenue and Taxation Code sections 480.1 and 480.2 require legal entities to file a change in ownership statement (form BOE-100-B) with the Board's Legal entity Organization Program when a change in control or ownership of the entity has occurred. The names of legal entities that do not respond to a second request by the Board of Equalization to provide change in ownership information on form BOE-100-B are placed on the Board's non-response list and transmitted to county assessors. The identities of legal entities on the Board's non-response list should not be disclosed to the public, regardless of whether the Board initiated contact with the non-responding legal entity based on confidential information received from the Franchise Tax Board or from public information sources. C 7/9/2008.

770.0000 STATE BOARD OF EQUALIZATION

770.0070 Legal Entity Ownership Program. Revenue and Taxation Code sections 480.1 and 480.2 require legal entities to file a change in ownership statement (form BOE-100-B) with the Board's Legal entity Organization Program when a change in control or ownership of the entity has occurred. The names of legal entities that do not respond to a second request by the Board of Equalization to provide change in ownership information on form BOE-100-B are placed on the Board's non-response list and transmitted to county assessors. The identities of legal entities on the Board's non-response list should not be disclosed to the public, regardless of whether the Board initiated contact with the non-responding legal entity based on confidential information received from the Franchise Tax Board or from public information sources. C 7/9/2008.

790.0000 SUPPLEMENTAL ASSESSMENT

790.0078 Exemptions. A California nonprofit public benefit corporation operates a college that qualifies as a nonprofit institution of higher education. The corporation leases an entire building from a for-profit entity. The lease was a triple-net lease that passed on all costs and expenses of the property, including a portion of the property taxes to the corporation. However, the corporation received the college exemption for the property.

The entity that owns the real property sold the property subject to the lease to an LLC, another for-profit entity. However, since the corporation's use of the property to operate a college constituted exclusive use of the property for educational purposes and no change in the use of the property occurred, the property continued to be eligible for the college exemption. Thus, under Revenue and Taxation Code sections 75.21(c) and 75.22, the property can continue to be exempt despite a change in ownership. Therefore, the property will not be subject to supplemental assessment if the claimant files a claim for exemption within 30 days of the notice of supplemental assessment and meets all the qualification for exemption within 90 days after the change in ownership. C 7/29/2008.